

Magistrate Judge Mary Alice Theiler

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

YING HAO LI,

Defendant.

NO. MJ20-060MAT

GOVERNMENT'S MEMORANDUM
OPPOSING CUSTODY RELEASE

The United States of America, by Brian T. Moran, United States Attorney, and Donald M. Reno, Jr., Assistant United States Attorney for the Western District of Washington, file this memorandum opposing Ying Hao Li's (Defendant) custody release.

I. Introduction

On February 13, 2020, Defendant had his initial appearance on a complaint charging him with alien smuggling. The Court ordered Defendant detained until his detention hearing scheduled for February 18, 2020, at 10:30 a.m.

Defendant has been detained at the Northwest Immigration and Customs Enforcement (ICE) Processing Center on administrative deportation charges (a Notice to Appear) since January 29, 2020, following his apprehension on January 28, 2020. Defendant was transported from ICE detention in Tacoma on

February 13, 2020, for his initial appearance. An ICE detainer was lodged with the Marshall Service on February 13, 2020.

At the initial appearance, AFPD Greg Geist, was given a notebook containing comprehensive discovery (“open file”) of the evidence supporting this prosecution.

II. Factual Background

The complaint charges Defendant with alien smuggling in violation of 8 U.S.C. §§ 1324(a)(1)(A)(i), (B)(i) and (2)(B)(ii). If convicted of alien smuggling under Section 1324(a)(2)(B)(ii), a mandatory minimum sentence of five years would be imposed as the evidence will establish Defendant smuggled three Chinese nationals for “private financial gain” when all four were apprehended by Border Patrol agents on January 28, 2020, near Lynden, Washington. *See* Complaint ¶¶ 2-5; *United States v. Gonzalez-Torres*, 309 F.3d 594, 601-02 (9th Cir. 2002) (a five-year mandatory minimum sentence was correctly imposed on the basis that each alien smuggled constituted a separate violation of 8 U.S.C. § 1324(a)(2)(B), “the text of the statute unequivocally provides for ‘each alien in respect to whom a violation of this paragraph occurs’”); *United States v. Tsai*, 282 F.3d 690, 698 (9th Cir. 2002) (“It therefore appears that a single transaction involving three aliens may count as a first, second, and third violation.”); *See generally*, *United States v. Angwin*, 271 F.3d 786, 802-03 (9th Cir. 2001)(discussing the distinction in penalties of 8 U.S.C. §§ 1324(a)(1)(A) and the mandatory minimum penalties of 1324 (a)(2) (B)(ii)).

III. Issue

Is Defendant a flight risk under the factors enumerated in the Bail Reform Act, 18 U.S.C. 3141, *et seq.*

IV. Discussion

A. *Factors to be Considered Under the Bail Reform Act*

The BRA provides that the Court shall consider the following factors in determining whether a defendant should be granted pretrial release:

(g) Factors to be considered.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence. . .

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, . . . ; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. . . .

18 U.S.C. § 3142(g).

B. Analysis of the significant flight risk factors

The government respectfully asks the Court to detain Defendant based on the weight of the evidence against him, his character, employment history, community/family ties, and criminal history.

In Defendant's sworn statement to Border Patrol agents following his apprehension, he stated he was unemployed and had recently lost \$1,000 gambling in a casino. He claimed his distressed financial status was the motivation for accepting the smuggling opportunity to earn \$500. *Id.* ¶10 b.

Assuming the facts pled in the complaint are credible and can be proven at trial, the prospect of Defendant being convicted as charged is overwhelming. Pursuant to Section 3142(g)(2), the weight of the evidence against Defendant is a relevant and

1 | important factor in determining flight risk. *See United States v. Gebro*, 948 F.2d 1118,
 2 | 1121 (9th Cir. 1991) (the fact the defendant's duress defense was rejected in his bank
 3 | robbery trial and he was sentenced to 132 months, but reversed on appeal, on retrial,
 4 | defendant's knowledge that his duress was rejected and he would face a lengthy sentence
 5 | if convicted again was properly considered in the flight risk evaluation).

6 | Given the strength of the pending charges, there is no incentive for Defendant to
 7 | return from Canada to stand trial. The likelihood he will be convicted and sentenced to a
 8 | mandatory minimum sentence of five years is a fact a rational person in Defendant's
 9 | position would weigh heavily in electing to remain in Canada.

10 | Defendant's predicament is much like the matter that government's counsel
 11 | prosecuted in 2005 in *United States v. Harinder Singh Jat*, CR05-247JLR. Mr. Jat was
 12 | charged with the same alien smuggling statute, 8 U.S.C. § 1324(a)(2)(B)(ii), as
 13 | Defendant. Mr. Jat, was a naturalized Canadian citizen residing in Canada. Border Patrol
 14 | agents apprehended him after surveillance cameras documented five aliens being
 15 | smuggled into the United States from Canada and entering Mr. Jat's vehicle. After a
 16 | complaint was filed, Mr. Jat was granted pretrial release. Dkt # 7. Following the
 17 | indictment, the matter was set for trial on January 10, 2006. Government's counsel
 18 | prepared the matter for trial (*See* Dkt. # 22-29). Mr. Jat failed to appear for a status
 19 | hearing several weeks before trial and a warrant was issued for his failure to appear. Dkt.
 20 | # 33-34. To this day, Mr. Jat has not been seen or heard from.

21 | If Defendant were released, he would come to the same realization as
 22 | Mr. Jat-- better to evade prosecution by remaining in Canada or returning to China than
 23 | to face a certain conviction and a five year mandatory prison term.
 24 | *Defendant's character, employment, criminal history, and community ties.*

25 | Defendant was convicted of a drug trafficking offense in Canada in 2005 and
 26 | sentenced to 90 days. He acknowledged in his post arrest statement to Border Patrol
 27 | agents that he was previously denied entry into the United States because of this
 28 | conviction. *Id.* ¶ 10a.

1 Defendant apparently has two minor children in Canada. Assuming that is true, it
2 further aggravates his status as a flight risk. Defendant committed the smuggling act
3 because he was financially destitute with no job and past gambling losses. He has been
4 unemployed for an unspecified period. Defendant's character and past lifestyle in Canada
5 offers no credible reason to dispel the fact he is a substantial flight risk.

6 *Significance of the ICE Detainer*

7 If Defendant is granted pretrial release, he will be returned to ICE detention
8 consistent with the pending ICE detainer. Here, unlike the desire of the overwhelming
9 number of ICE detainees that have appeared before this Court, Defendant would
10 welcome a swift deportation order as it would assure a same day removal to Canada at
11 the Blaine Port of Entry.

12 WHEREFORE, the government respectfully urges the Court to deny Defendant's
13 request for custodial release as there are no reasonable conditions of release that can
14 assure his next court appearance.

15 DATED this 14th day of February, 2020.

17 Respectfully submitted,

18 BRIAN T. MORAN
19 United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via e-mail and/or telefax.

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